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POLICE OFFICER'S HANDBOOK

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ARREST WARRANTS

- (A) Proper Identification of Defendants
- (B) 'John Doe' Arrest Warrants
- (C) Necessity of Including Facts  
to Show Probable Cause

FLEMING'S NOTEBOOK...Chapter 95:

Magistrate's Duty to Find  
Probable Cause Before Issuing Warrant

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Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

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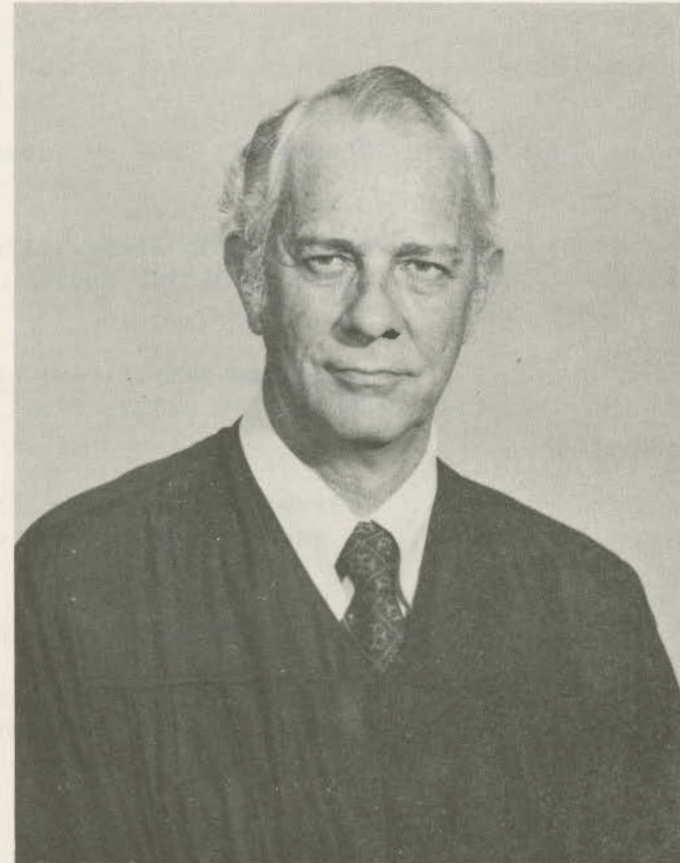
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Hon. Clarence E. Singletary  
Resident Judge  
Ninth Judicial Circuit

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FOREWORD

The rules of modern society, with an ever increasing population and more and more awareness on the part of the public as to technical individual rights, have long ago made it highly important that all professional police officers be thoroughly familiar with all the rules relating to the arrest and incarceration of persons who are accused of having broken the law.

Special care must be taken when there is a possibility that the wrong person might be arrested and jailed. This is especially likely when the arresting officer does not know the defendant, and must rely upon information contained in an arrest warrant delivered to him for execution. A police officer assigned to such duty is entitled to reasonable care by those who issue the warrants to obtain enough information about the defendant so that the officer can proceed with confidence that he knows whom he is to arrest.

Although the results are often less spectacular, a defective arrest warrant can have results every bit



as disastrous to a case as a defective search warrant. In this booklet, we shall discuss that subject to some extent.

Clarence E. Singletary

Resident Judge

Ninth Judicial Circuit

## ARREST WARRANTS

### A.

#### Identifying the Defendant

A large police department today has so many 'outside' arrest warrants to execute that often the very mass of numbers makes it difficult for each one to be inspected properly. Too often, an officer will attempt to obtain the necessary identifying information himself rather than send the warrant back for adequate information. This approach is often a mistake.

When any police officer is asked to execute an arrest warrant, he has every right to demand that he be given adequate information so that he can exercise reasonable care to see that he does not become involved in a false arrest situation.

Name

When the defendant has a middle name, that name should be included in the warrant...in full. The next best thing is to have the middle initial. Except when the information is not available, an arrest warrant should not name the defendant by initials and last name only, such as 'J.A. Smith'.

The name, shown on an arrest warrant, in order of preference, are in these forms:

John Smith Doe (most desirable)

John S. Doe (acceptable)

John Doe (insufficient)

J.S. Doe (insufficient)

When the subject does not have a middle name, that fact should be indicated: John (NMN) Doe.

The foregoing is not intended to indicate that an arrest warrant showing the defendant as 'John Doe' or 'J.S. Doe' is legally insufficient. The defect indicated is in the area of the practical matter of the protection of the officer executing the warrant.

Address

The address of the defendant should be included in the affidavit, if it is available. Usually, such information is written or typed on the back of the warrant, and this is all right if the information is correct. In any event, the address of the defendant, if known, should be included in every warrant. It is an additional method of identification.

When the address is included in the affidavit, the officer executing the warrant is in better position in the event of a false arrest than if the address is shown on the back. It is often difficult to prove who put a notation as to address on the back of the warrant; whereas, if it is in the affidavit, it is clear that the information came from the person who obtained the warrant.

When there is a defendant who is a Senior, or Junior, this designation should be included in the warrant in every case.

Description

Some metropolitan police departments are now requiring that arrest warrants sent to them for execution must contain a description of the defendant. This is a reasonable precaution, especially when the warrant is from an outside source...that is...when the arrest warrant is obtained by someone other than the department's own officers.

Example of Affidavit

"Personally appeared before me one Richard Roe, who, being duly sworn, says:

That on the 1st day of March, 1973, in this County one John Smith Doe, Jr., did cut and wound the said Richard Roe with a knife with intent to kill the said Richard Roe.

Richard Roe further says that the said John Smith Doe, Jr., is a white male, 20-22 years of age, approximately 5'10" and 170 pounds, and, to the best of his

knowledge, the defendant resides on the 1700 block of Hinson Street in the City of Wateree, S.C."



Conclusion

The foregoing remarks are not intended to say that an arrest warrant is unlawful unless it contains all the information suggested, nor are such remarks intended to say that a police officer arresting the wrong person on a warrant that does not contain the suggested information will be liable in every case in a damage suit.

What this handbook does say is that a police officer who is asked to execute an arrest warrant is entitled to have furnished to him reasonably sufficient information so that he can avoid making a false arrest because of lack of information.

One practise that has been noted, and which is advised against, is police obtaining addresses of defendants from utility company records, telephone books, and city directories. It is obvious that the chance of getting the wrong person is very great.

When a police department receives an arrest warrant for execution, and there is not sufficient information contained in the warrant so that a police officer can be reasonably sure that he is arresting the right person, the officer has every right to refuse to execute the warrant until he does have the proper information.

NOTES ON ARREST WARRANTS

FROM WHARTON'S CRIMINAL PROCEDURE

Arrest With Warrant

A warrant is a legal process, issued by competent authority, directing the arrest of a person or persons upon grounds stated therein. It is usually directed to regular officers of the law, but occasionally it is issued to a private person named in it. A warrant issued by a justice of the peace or magistrate should be signed by him, and his seal should be affixed, although there is a conflict of authority as to the effect of the absence of the seal. Some authorities hold that the warrant is void if not sealed while others regard the omission as a mere formal irregularity which does not render the warrant void.

When a state Constitution provided that all process, writs, and other proceedings shall run in the name of the state, the direction is mandatory, and a person cannot lawfully be arrested by a sheriff acting under a copy of an order of court and without any

warrant or process in the form required by the Constitution. Apart from any special statutory or constitutional provision, it is generally held that a warrant is insufficient and void if, on its face, it fails to state facts sufficient to constitute an offense. But the strictness required in an indictment is not essential, nor does every slight defect render a warrant ineffectual. For example, a recital that a warrant is issued for a violation of a statute which is void does not render the warrant void, when it also recites the violation of a valid statute.

A warrant may be amended so as to cure minor defects, such as a misstatement of the return day; but any material alteration of a warrant of arrest after it has finally left the hands of the magistrate issuing it, such as the insertion of a name by another magistrate before whom it is made returnable, is illegal, and the arrest of the person whose name is inserted cannot lawfully be made under the warrant.

A warrant should show on its face the facts essential to the jurisdiction of the official issuing it.

A warrant may be issued on Sunday.

ARREST WARRANTS

B.

'John Doe' Warrants

A 'John Doe' arrest warrant, unless it contains a sufficient description of the defendant to identify him, is not a lawful warrant, and an arrest made pursuant to such a warrant is an illegal arrest.

When a defendant can be described with sufficient detail to make it reasonably sure that the correct person will be arrested, no name at all need appear in the affidavit or warrant. The warrant is lawful, and an arrest made under authority of the warrant is lawful, even though the defendant's name does not appear on the warrant at all.

When the name of the defendant is not known, the more detail that can be given about him, the better. An identifying scar or tattoo is good, in addition to the normal items, such as, age, race, coloring, height, and weight. Description of clothing can help...it cannot hurt.

Notes on 'John Doe' Warrants

From Wharton's Criminal Law

...Description of Person

Description of Person to be Arrested

It is essential to the validity of the warrant that the person to be arrested should be identified by the terms of the warrant. This is usually done by the insertion of his name on the warrant, although it is not indispensable that the name of the person to be arrested should appear in the warrant. If, however, the warrant does not set forth the name by reason of its being unknown, or for other adequate cause, the rule is well established that the warrant must contain the best description possible, sufficient to indicate clearly the person to be arrested, and should state his occupation, personal appearance, place of residence, or other means of identifying him.

If the warrant does not contain the name of the defendant or any description or designation by which



he could be known and identified as the person sought, it is void. Thus, a warrant granted with the name in blank and without sufficient designation of the person to be arrested is void, not only at common law, but as being in violation of the constitutional provisions declaring that every citizen has a right to be secure from unreasonable search and seizure and that no warrant shall issue for the arrest of a person without a special designation of the persons or objects of search, arrest, or seizure. A warrant to arrest 'John Doe', without any further description or means of identification of the person to be arrested, is a nullity. However, when an arrest is made under a John Doe warrant, and later, a regular warrant is issued under which the prisoner is held, the courts have refused to release the person arrested in spite of the invalidity of the original arrest. Even when a John Doe warrant has been issued, the prisoner will not be released if for any reason the arrest may be upheld as valid, as, for instance, when it was for an offense committed in the presence of the officer making the

arrest. In a number of states statutes have been adopted providing that the accused shall be named in the warrant but that if his name is unknown "he may be designated by any name".

It has been held that an officer cannot justify an arrest made under a warrant which gives the surname, but not the first name, of the person to be arrested, or which gives a first name erroneously.



ARREST WARRANTS

C.

Probable Cause in Arrest Warrants

The affidavit of an arrest warrant, especially when the warrant is issued on 'information and belief', should set forth sufficient facts to support the charge. This is not something about which there is room for argument. The United States Supreme Court has stated that an arrest warrant that does not contain such facts is invalid under the Fourth Amendment to the Constitution of the United States. See Whitley v. Warden, 39 LW 4339.

As startling as it may seem in view of the continuing practise in most places in South Carolina, an arrest warrant affidavit worded as follows is not legal:

"Personally appeared before me John Smith, a police officer of this County, who, being duly sworn, says that he is informed and believes that John David Roe did in this County on the 31st day of March, 1973, break and enter the store building of one Same Storekeeper with intent to commit a crime therein."

Additional information should be included in the affidavit, for example:

"John David Roe was apprehended on the day following the said break-in when he attempted to sell certain items identified by Sam Storekeeper as having been stolen from his store at a pawn shop in this County."

Another example:

"The said John David Roe was identified by a neighbor of Sam Storekeeper, namely John Neighbor, from a photograph as being the person the neighbor saw leaving the store by a window in the early morning hours of the 31st day of March, 1973."

The foregoing examples recite facts that constitute probable cause that the defendant committed the offense charged. The magistrate can make an independent determination of his own...which he is under a duty to do...of whether or not it is probable that the defendant named did commit such act. He does not have to rely upon the beliefs and conclusions of others.

Notes From Wharton's Criminal  
Law and Procedure...Issuance  
of Arrest Warrants Generally

Issuance of Warrant

While magistrates and justices of the peace are the persons who most frequently issue warrants of arrest, such warrants may be issued by other persons when it is so provided by statute. A warrant of arrest issued by a coroner after a finding of guilty by a coroner's jury may have the same validity as a warrant issued by a justice of the peace. It has been ruled

that Congress has power to punish for a contempt of its authority and a breach of its privileges, and may legally issue a warrant to the sergeant at arms of the House, and an arrest made on such warrant is legal.

Statutes which confer power upon clerks of court to issue warrants of arrest have been upheld as constitutional.

When an application for a warrant is made to a magistrate, it is his duty to determine whether an offense has been committed and to decide whether a warrant shall be issued for the arrest of the person charged with being the offender. In determining these matters, the magistrate exercises judicial functions and has a discretion to exercise, and from this it results that a writ of mandamus will not issue to compel him to issue a warrant. It is his duty, however, to hear and determine such matters; and when he refuses to do so, a writ of mandamus may be issued to compel him to take action, although it will not direct the manner of so doing. Nor will mandamus be issued to compel the board of police commissioners of a city to



arrest and prosecute certain named persons for a violation of a law.

The function of determining whether probable cause exists for the arrest of a person is only quasi-judicial, and is not such that because of its nature it must necessarily be confided to a strictly judicial officer or tribunal. The requirement is sufficiently complied with by a preliminary investigation conducted by a prosecuting attorney upon which he files a sworn information against the party accused.

#### Necessity for Affidavit or Affirmation

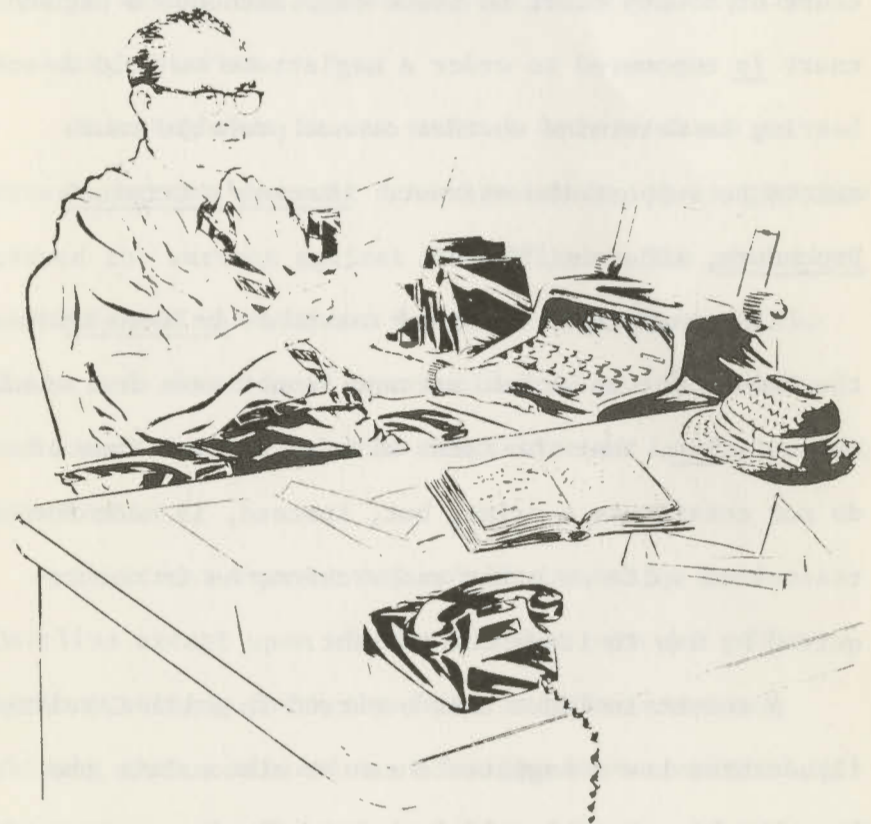
To prevent illegal restraint for trivial causes, the general rule of the common law is that, except when the gravity of the offense seems to justify an immediate arrest without a warrant, or a crime has been committed in the presence of the officer or person making the arrest, no arrest may lawfully be made until a warrant has been issued after formal charge filed with a magistrate or court having jurisdiction of the

subject matter. No arrest for a misdemeanor committed outside the presence of the one complaining should be made without a warrant based on a proper affidavit. Frequently, a constitutional provision expressly prohibits the issuing of warrants except on probable cause supported by oath or affirmation, and the affidavit in such cases becomes an essential basis for the issuing of a warrant, so that an arrest becomes illegal if made under a warrant not properly based upon an affidavit and all those concerned in making the arrest may be liable as trespassers. But a constitutional provision against issuing a warrant without probable cause, supported by oath or affirmation, does not apply to an arrest without a warrant.

Statutes generally require that warrants may be issued only on oath or affirmation; and such oath or affirmation is a prerequisite in conferring jurisdiction on the justice over the person of the defendant. In the absence of a statutory direction, the affidavit upon which a warrant is issued need not necessarily be sworn to by a person having actual knowledge of the

offense. Nevertheless, some person should aver and swear to the facts and circumstances showing the legality of the warrant.

FLEMING'S NOTEBOOK





FLEMING'S NOTEBOOK...Chapter 95

Whether or not there is probable cause for an arrest warrant to be issued is within the discretion of the magistrate...he may not be ordered by a circuit court or county court to issue it...although a higher court is empowered to order a magistrate to hold a hearing to determine whether or not probable cause exists to support the warrant. Wharton's Criminal Procedure, Anderson, S.1588.

If a magistrate has good reason to believe that the demand for an arrest warrant is not made for sound reasons, i.e. that the facts alleged are not true or do not constitute a crime, but, instead, is made for reasons of spite or other such reason, he is not required by law to issue the warrant.

A recent incident that occurred in South Carolina illustrates how a magistrate can so misconstrue the law that he makes himself look not only incompetent, but foolish. A police officer clocked a motorist exceeding the speed limit and gave chase. He stopped

the motorist and brought her before the magistrate. A friend of the motorist, who was in another car, arrived and demanded an arrest warrant charging the police officer with speeding, alleging that the police officer, too, should be charged since it was necessary that he exceed the speed limit in order to stop the speeding motorist.

Thinking that he was under a duty to issue an arrest warrant whenever demand was made, the magistrate issued the warrant against the officer. The situation was 'cleared up' without too much publicity, but the whole mess could have been avoided if the magistrate had known that he had some discretion in issuing arrest warrants.

An arrest warrant may not be issued in South Carolina except upon affidavit under oath (or affirmation) setting forth the facts and circumstances showing that a violation of law has been committed by the person accused in the warrant. State v. Higgins, 51 SC 51, 28 SE 15.

The issuance of an arrest warrant is not a matter of right to be claimed by the person demanding the warrant. It is the duty of the magistrate to decide for himself whether or not there are reasonable grounds to believe an offense has been committed, and to decide whether or not the warrant should issue. Wharton's, Arrest, S.1588.

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